giving the best consideration I can in the circumstances, I award a sum of $10,000.

In the circumstances the defendant company is entitled to $119,635.75 on their counter-claim. A sum of $14,500 as representing the value of materials on the site must be deducted. That leaves a sum of $105,135.75 in their favour. This is a set-off against the plaintiff's claim of $79,355. Where the employer sets out a defence of an equitable set-off to a claim by the contractor for price of work done, the latter's claim will be treated as having failed if the amount to be set-off exceeds the amount claimed. *Hanak* v. *Green* [13] is authority for that proposition. Accordingly the plaintiff's claim is dismissed with costs. The defendant company's counter-claim is upheld. They are therefore entitled to a sum of $25,780.75 and costs of the counter-claim.

Plaintiff's claim dismissed. Defendant's counter-claim upheld.

Solicitors: *Dato' R. P. S. Rajasooria & Son; Shearn, Delamore & Co.*

GWEE KIM BOCK v. SINGAPORE GLASS MANUFACTURERS CO. LTD.

[O.C.J. (Choor Singh J.) June 24, 1966]

[Singapore — Suit No. 626 of 1966]

Practice and Procedure — Statement of claim — Claim for damages for injuries received in a road accident — Particulars necessary.

Damages — Claim for — Statement — Particulars.

Negligence — Road accident — Particulars.

The plaintiff had brought an action for damages for injuries received in a road accident and he alleged in his statement of claim that he on or about March 19, 1964, was at or near Ayer Rajah Road when he was run into and knocked down by a motor van SGA 4611 driven by the servant or agent of the denfendant. The defendants applied by summons in chambers for an order that the plaintiff do file further and better particulars.

Held: when a plaintiff claims damages for injuries received in a road accident, he must, in his statement of claim, give sufficient particulars to enable the defendant, first to identify the accident in question and secondly to know what exactly is the case he has to answer. It is not sufficient to state merely the particulars of the defendant's negligence.

SUMMONS IN CHAMBERS.

T. G. Dunbar for the plaintiff.

J. Grimberg for the defendants.

Choor Singh J.: This was an application by the defendants made by way of summons-in-chambers for an order that the plaintiff do file further and better particulars of his claim.

The plaintiff in his statement of claim pleaded as follows:—

"On or about the 19th day of March, 1964, the plaintiff was lawfully at or near Ayer Rajah Road in Singapore when he was run into and knocked down by motor-van SGA 4611 which was being driven by the servant or agent of the defendants and which was travelling along Ayer Rajah Road in the direction of Alexandra Road.

The said collision was caused solely by the negligence of the servant or agent of the defendants.

Particulars of Negligence

(a) Failing to keep any or any proper look out;

(b) Driving at an excessive speed in the circumstances;

(c) Failing to observe the presence of the plaintiff on the highway;

(d) Driving into the plaintiff;

(e) Driving on to the wrong side of the road;

(f) Failing to stop, swerve, slow down or otherwise avoid the said collision.

By reason of the aforesaid negligence the plaintiff has suffered injuries, has endured pain and has been put to loss and expense.'

The defendants, in their summons, prayed for an order

"That the plaintiff's solicitors do file further and better particulars of the statement of claim as follows:—

Under Paragraph 1

Of the allegation that the plaintiff was lawfully at or near Ayer Rajah Road Singapore when he was run into and knocked down by motor van No. SGA 4611, stating precisely the plaintiff's position in relation to or upon Ayer Rajah Road when he was so run into and knocked down."

At the hearing of the summons, counsel for the defendants submitted that the statement of claim did not contain sufficient particulars of the scene of the accident upon which he could take the defendants' instructions, or sufficiently particularise the substantial issue before the court. Counsel for the plaintiff replied, that there was only one accident; that the defendants knew all about it and that the defendants were therefore not entitled to any further or better particulars.

The defendants not having filed their defence, it is not known whether or not they admit that their motor van was involved in the accident in question.

In my opinion, when a plaintiff claims damages for injuries received in a road accident, he must, in his statement of claim, give sufficient particulars to enable the defendant, first, to identify the accident in question and, secondly, to know what exactly is the case he has to answer. It is not sufficient to state merely the particulars of the defendant's negligence. The plaintiff must give particulars of his own situation at the time of the accident and state the circumstances under which the defendant collided with him. Particulars of a defendant's negligence do not make any sense unless and until it is known where the plaintiff was and what he was doing at the time of the collision.

In the present case the plaintiff has not even given the approximate time of the accident. Nor has he stated whether at the time of the accident he was on the road or off the road e.g. on the grass verge. Again, he has not stated whether he was standing stationary or was in motion, and if in motion, the direction in which he was moving. All that the plaintiff has stated is that on or about the 19th day of March, 1964, he was lawfully at or near Ayer Rajah Road in Singapore when he was run into and knocked down by a motor van driven by a servant of the defendants and which was travelling along Ayer Rajah Road in the direction of Alexandra Road. In my opinion these particulars are manifestly inadequate. I therefore made on order in terms of the defendants' application.

Order in terms of application.

Solicitors: *Murphy & Dunbar; Drew & Napier.*

SUNDRALINGAM v. RAMANATHAN CHETTIAR

[O.C.J. (MacIntyre J.) June 24, 1966]

[Ipoh — Civil Appeal No. 9 of 1966]

Moneylenders — Promissory note written in English — No attestation — Whether void — Stare decisis — Whether court bound to follow decision of a court of co-ordinate jurisdiction — Moneylenders Ordinance. 1951, s. 27.

This was an appeal from the decision of the learned magistrate who had given judgment against the appellant in an action by a moneylender for the sum of $832.65. The defendant had argued that the promissory note in the case was void for non-compliance with section 27 of the Moneylenders Ordinance, as it was written in English and should have been attested. The learned magistrate acting on the authority of *Narayanan* v. *Alagappa* (1) held that attestation was not necessary as the appellant was aware of the contents of the note when the loan was advanced.

Held: although the appellant did not understand English there was no evidence to show that he did not know the terms of the contract in the promissory note which he had signed and therefore the court was bound by authority to hold that no attestation was necessary in this case.

[Editorial Note: Reference may be made to the *Editorial Note* to *P. N. Mohamed Ibrahim* v. *Yap Chin Hock & Anor.*(3) and *Mallal's* Supreme Court Practice Vol. 1 pp. 929 - 930 on the question of *stare decisis.* See also *Ng Kay Thong* v. *Chan Shon Shong,* p. 305 *post.*]

Cases referred to:—

(1) *Narayanan* v. *Alagappa* [1956] M.L.J. 23.

(2) *Natha Singh* v. *Syed Abdul Rahman and another* [1962] M.L.J. 265.

(3) *P. N. Mohamed Ibrahim* v. *Yap Chin Hock and another* [1954] M.L.J. 127.

(4) *Young* v. *Bristol Aeroplane Co. Ltd.* [1944] 2 All E.R. 293.

CIVIL APPEAL.

Leong Choo Kong for the appellant.

P. P. Dharmananda for the respondent.

Cur. Adv. Vult.

MacIntyre J.: This is an appeal from the decision of the learned magistrate at Ipoh whereby judgment was entered for the respondent against the appellant in a moneylender's action for the sum of $832.65, interest and costs.

In the court below the appellant had pleaded that the promissory note was void for non-compliance with the provisions of section 27 of the Moneylenders Ordinance, 1951, in that the note was written in the English language which he did not know and should, therefore, have been attested. But the learned magistrate acting on the authority of the decision in *KR. Narayanan* v. *AL. Alagappa* (1) held that attestation was not necessary in this case as the appellant was aware of the contents of the note when the loan was advanced. He presumed that appellant had knowledge of the contents of the promissory note from the fact that he had entered into similar transactions with the respondent in the past.

Section 27 of the Moneylenders Ordinance reads as follows:

"27. (1) Whenever a promissory note is taken as security for any loan and the borrower is a person not understanding the written language on such note the note shall be attested by an Advocate and Solicitor of the Supreme Court, a President of Sessions Court, a Magistrate, District Officer, Justice of the Peace, Registrar of a Sessions Court, Commissioner for Oaths, or such other person as may be appointed by the Minister generally for such purpose. The attestor shall explain the terms of the promissory note to the borrower, and shall certify thereon that the borrower appeared to understand the same. The money borrowed shall be paid over by the lender to the borrower in the presence of the attestor who shall certify the fact upon the promissory note.

(2) Any promissory note required to be attested under this section and not so attested shall be void and the lender shall not be entitled to recover any loan for which such note is taken as security."

Now in *Narayanan* v. *Alagappa, supra,* Storr J. interpreted section 27 as follows:

"Now the wording of this section provides that the terms of the promissory note are to be explained to the borrower if he does not understand the written language on such promissory note and that to me means simply what it says. If the borrower does not understand what is written on the promissory note, then an attestor shall explain the terms of the note; it does not mean that, if the borrower does not understand the language in which the note is written, i.e. either English or Malay (*vide* section 16), there must be an attestor, if he undersands the terms and contents of the note. I think, therefore, on that point in his grounds of judgment the learned magistrate was correct in his interpretation of section 27."

Although the decision of Storr J. has stood unchallenged for 10 years, with respect, I am unable to agree with his interpretation of the section. The first requisite of that section is that every promissory note written in a language not understood by the borrower, must be attested. The words "not understanding the written